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NO. 82-808

IN THE SUPREME COURT OF THE UNITED STATES OCTOBER TERM, 1982

NATHAN MAURICE SHAY,
Petitioner

V.

THE STATE OF TEXAS,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE TEXAS COURT OF CRIMINAL APPEALS

RESPONDENT'S MEMORANDUM OPPOSING CERTIORARI

MARK WHITE
Attorney General of Texas

JOHN W. FAINTER, JR.
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ATTORNEYS FOR RESPONDENT

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TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

NOW COMES Mark White, Attorney General of Texas, attorney for Respondent, and submits this his Memorandum Opposing Certiorari:

I.

The sole question presented by Petitioner is whether his judgment of conviction of forgery should be reversed because the evidence at his trial was insufficient to establish his knowledge that the American Airlines coupons he bought were forged or that he sold them

with intent to defraud. This question is a plainly insubstantial one that does not merit plenary review by this Court.

II.

In its opinion affirming the judgment of conviction, the Fifth Supreme Judicial District of Texas noted that the prosecution "may establish intent to defraud or harm circumstantially by proof of the accused's knowledge that the instrument was forged." (Exhibit A to the Petition for Writ of Certiorari at 2). The court further noted that George Kent, who bought the forged airline coupons from Petitioner, testified at trial "that at the time of the transaction, Appellant insisted on cash, refused to give Kent his telephone number, which was unlisted, and gave Kent a false name." (*Id.*). Citing state law authority, the court concluded:

> We find these circumstances sufficient, taken as a whole, for the jury to find that appellant knew that the coupons in question were forged and, therefore, acted with intent to defraud.

(Id.). Petitioner's argument amounts to a complaint that a rational trier of fact could not reasonably have drawn such inferences from the circumstances. (Petition at 9-11).

III.

Plainly Petitioner fails to present a substantial federal question. He argues that the outcome of his case should have been different under *Jackson v. Virginia*, 443 U.S. 307 (1979), but advocates no alteration of the standard of review set forth in *Jackson v. Virginia*. Instead, he complains of its routine and unexceptional application in his case. He sets forth no conflicting case from any jurisdiction. Accordingly, there are no "special and im-

portant reasons" for granting review in his case. S.Ct.R. 17.

Therefore, the petition for writ of certiorari should be denied.

Respectfully submitted,

MARK WHITE
Attorney General of Texas

JOHN W. FAINTER, JR.
First Assistant Attorney General

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ATTORNEYS FOR RESPONDENT

December _____, 1982

PROOF OF SERVICE

I, Douglas M. Becker, Assistant Attorney General of Texas, do hereby certify that on the _____ day of December, 1982, three copies of the Memorandum Opposing Certiorari were mailed, postage prepaid, to Kerry P. Fitzgerald, 3503 Fairmount, Dallas, Texas 75219. All parties required to be served have been served. I am a member of the Bar of this Court.

DOUGLAS M. BECKER
Assistant Attorney General
Attorney for Respondent

SUBSCRIBED AND SWORN to before me this _____ day of _____, 1982.

NOTARY PUBLIC in and for
Travis County, Texas